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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,423	05/23/2001	Michael Bourbeau		3867
7590	05/11/2004		EXAMINER	NGUYEN, CHI Q
Matthew J. Peirce, Esq. 1550 Starlight Canyon Avenue Las Vegas, NV 89123			ART UNIT	PAPER NUMBER
			3635	
				DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/864,423	BOURBEAU, MICHAEL	
	Examiner Chi Q Nguyen	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 November 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office action is in response to the applicant's amendment filed on 11/30/03.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toll (US 3,941,159).

Toll teaches insulation assembly for a tubular conduit pipe comprising a cover 16 having a length, a width, first 20, second 22 sides, first 24, second 26 edges. The cover 16 is formed of material 18 of urethane foam or other suitable material (col. 2, lines 25-30) being wrapped around pipe 12 and secured by removably fastener means 38 are hook-and-loop 40, 42 disposed at the edges 24, 26 of the first and the second sections. (See figs. 1-3, cols. 2-3).

Toll does not disclose specifically the cover having a thickness of at least  $\frac{1}{2}$ ", the length would be approximately 8' and the width would be approximately 11.5". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the thickness of at least  $\frac{1}{2}$ ", length 8', and width 11.5", since it has been held that where the general conditions of a claim are disclose in the prior art, discovering the optimum or working ranges involves only routine skill in the art. The motivation for doing so would have been to provide the insulation for the entire length of the pipe, thus giving protection from exposing to the severe temperature.

#### ***Response to Arguments***

Applicant's arguments filed 11/30/03 have been fully considered but they are not persuasive. As stated, Toll teaches the structural elements for the cover except for the cover's specific dimensions such as thickness, length, and width. However, the examiner considers this would have been obvious matter of design choice based on desired use because any cover inherently had size such as thickness, length, and width, etc. So that the size is needed to be long, and wide enough to cover a pipe, and thick enough for insulating purposes. Therefore, the size does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The examiner believes that the rejection is proper and valid.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-

1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
CQN  
5/3/04

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600